



WILLIAM T FUJIOKA
Chief Executive Officer

County of Los Angeles CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 713, Los Angeles, California 90012
(213) 974-1101
<http://ceo.lacounty.gov>

Board of Supervisors
GLORIA MOLINA
First District

YVONNE B. BURKE
Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

October 7, 2008

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**RESOLUTION IMPLEMENTING SENATE BILL 579 AMENDING SECTION
31663.15 AND REPEALING SECTIONS 31663.2 AND 31680.9 OF THE
CALIFORNIA GOVERNMENT CODE
(3 VOTES)**

SUBJECT

Adopt a resolution implementing Senate Bill (SB) 579 which will allow Fire Department retirees to be reinstated to active membership and repeal the provision requiring the Fire Chief of Los Angeles County, who was employed as fire chief on May 1, 2005, to retire on April 1, 2009.

IT IS RECOMMENDED THAT YOUR BOARD:

Adopt the attached resolution to implement Senate Bill (SB) 579 which amends Section 31663.15 and repeals Section 31663.2 and 31680.9 of the California Government Code. The provisions of SB 759 will allow Fire Department retirees, pursuant to Government Code Section 31680.8, to be reinstated to active membership if adopted by a majority vote of the County Board of Supervisors. In addition, this bill will repeal the provision requiring the Fire Chief of Los Angeles County, who was employed as the fire chief on May 1, 2005, to retire on April 1, 2009.

"To Enrich Lives Through Effective And Caring Service"

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PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On October 5, 2007, the Governor signed into law SB 134 (Chapter 290, Statutes of 2007). This bill added Section 31663.15 to the California Government Code. Section 31663.15 allows Sheriff's and Fire Department safety members to continue in active employment after age 60, if a County employed or County approved physician certifies that he or she is capable of performing their assigned duties pursuant to the standards set forth by the employer. In addition, it allows sworn Sheriff's Department retirees to reinstate from retirement as permitted by the County Board of Supervisors. However, SB 134 did not allow for reinstatement of Fire Department safety members. These provisions were adopted by the County Board of Supervisors in a resolution on December 18, 2007 and made applicable to the County of Los Angeles effective January 1, 2008 (Attachment I).

On June 2, 2008, the Governor signed into law Senate Bill 579 (Chapter 21, Statutes of 2008). This bill amends Section 31663.15 and repeals Section 31663.2 and 31680.9 of the California Government Code addressing County employees' retirement.

Section 31663.15, as amended, will allow Fire Department safety employees, who retired after March 31, 2007 to reinstate, if a County employed or County approved physician certifies that he or she is capable of performing their assigned duties pursuant to the standards set forth by the employer. In addition, it appeals Sections 31662.3 and 31680.9 which exempted fire suppression safety members from reinstatement provisions and required the current Fire Chief of Los Angeles County to retire on April 1, 2009. These provisions only become operative if adopted by the County Board of Supervisors in a resolution.

The purpose of this recommended action is for your Board to provide the required approval, adopt the attached resolution and enact SB 579 in Los Angeles County, which will extend the reinstatement provisions to Fire Department retirees. Without these reinstatement provisions the County can employ these retired fire safety members in positions requiring special skills or knowledge, but only for a maximum of 90 working days or 720 hours. The Board also could, under the provisions of retirement law, extend that re-employment period, without reinstatement up to 120 working days or 960 hours, whichever is greater.

IMPLEMENTATION OF STRATEGIC PLAN GOALS

This recommended action is consistent with the Countywide Strategic Plan Goal 3, Organizational Effectiveness by creating equitable and consistent policies for all safety members of the Fire Department; and Strategic Plan Goal 1, Service Excellence by allowing the Department to retain personnel with specific experience or expertise.

FISCAL IMPACT/FINANCING

There is no impact to net County cost.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The adoption of SB 134 authorized the Board to exempt Sheriff and Fire Department safety members from mandatory retirement. In addition, SB 134 provided that a Sheriff Department's safety member who was required to retire may be reinstated to active service providing a County employed or County approved physician certifies that the safety member is capable of performing his or her assigned duties.

County Counsel, however, was of the opinion that Government Code Section 31680.9(a)(2), however, specifically exempted fire suppression safety members from the reinstatement provisions of section 31680.9. The County sponsored legislation, SB 579, to address this issue.

In addition, existing law specifically required the Fire Chief of Los Angeles County who was employed as fire chief on May 1, 2005 to retire on April 1, 2009. SB 579 would repeal this provision.

IMPACT ON CURRENT SERVICES

The recommended action will allow the Fire Department to retain personnel with specific expertise or experience and therefore maintain the level of services provided to the public.

CONCLUSION

It is, therefore, our recommendation that the Board adopts the attached resolution and creates equitable and consistent policies for all safety members of the Los Angeles County Fire Department.

The Honorable Board of Supervisors
October 7, 2008
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If you have any questions or require additional information, please contact Doyle Campbell, Deputy Chief Executive Officer, Public Safety, at (213) 893-2374.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'W. T. Fujioka', with a long horizontal stroke extending to the right.

WILLIAM T FUJIOKA
Chief Executive Officer

WTF:SRH:RDC
JW:SW:PV:yjf

Attachment

c: Fire Department

SB 579.bl



WILLIAM T FUJIOKA
Chief Executive Officer

County of Los Angeles CHIEF EXECUTIVE OFFICE

713 KENNETH HAHN HALL OF ADMINISTRATION
LOS ANGELES, CALIFORNIA 90012
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December 18, 2007

Board of Supervisors
GLORIA MOLINA
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Second District

ZEV YAROSLAVSKY
Third District

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Fourth District

MICHAEL D. ANTONOVICH
Fifth District

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

RESOLUTION IMPLEMENTING SENATE BILL 134 ADDING SECTION 31663.15 TO THE CALIFORNIA GOVERNMENT CODE (3 VOTES)

IT IS RECOMMENDED THAT YOUR BOARD:

Adopt the resolution to implement Senate Bill (SB) 134 which adds Section 31663.15 to the California Government Code. This bill allows the Sheriff's and Fire Department safety members (in Los Angeles County only) who are currently required to retire at age 60, to continue in employment if these provisions are adopted by a majority vote of the County Board of Supervisors. In addition, pursuant to Government Code Section 31680.9, this bill will allow Sheriff's Department retirees to be reinstated to active membership.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On October 5, 2007, the Governor signed into law SB 134 (Chapter 290, Statutes of 2007). This bill adds Section 31663.15 to the California Government Code addressing County employees' retirement.

Section 31663.15 allows the Sheriff's and Fire Department safety members to continue in active employment after age 60, if a County employed or County approved physician certifies that he or she is capable of performing their assigned duties pursuant to the standards set forth by the employer. In addition, it will allow sworn Sheriff's Department retirees to reinstate from retirement as

In 1984, two (2) lawsuits were filed against the County of Los Angeles and the Los Angeles County Retirement Board (LACERA). Judgments were entered in 1985 prohibiting LACERA from mandating that life guards and investigators in the District Attorney's Office retire when they reached a specified age.

Effective January 1, 1987, amendments to the County of Employees Retirement Law made mandatory retirement optional, at the election of the County Board of Supervisors.

In December of 1986, the Los Angeles County Board of Supervisors, at the recommendation of Sheriff Sherman Block, and the County Fire Chief, John Englund, adopted a resolution to continue mandatory retirement for Sheriff's and Fire Department safety members in the County of Los Angeles.

During the same year, Congress incorporated a "public safety exemption" in the ADEA, which allowed State and local governments to enforce mandatory retirement provisions. The public safety exemption had a sunset provision of December 31, 1993.

On January 1, 1994, LACERA no longer enforced the mandatory retirement provision under the rationale that expiration of the "public safety exemption" placed the County's mandatory retirement laws in conflict with the ADEA, and under the supremacy clause of the U.S. Constitution, federal laws prevail over conflicting State law.

In September 30, 1996, HR 4278 reinstated the "public safety exemption" and included the following additional provisions:

- Mandatory retirement age cannot be lower than 55.
- Requires the National Institute for Occupational Safety and Health, an agency of the U.S. Department of Health and Human Resources, to conduct a study on fitness and to promulgate guidelines for job performance testing. Guidelines must be published and made effective by September 30, 2000.
- After September 30, 2000, any agency that wishes to enforce mandatory retirement provisions must administer annually a fitness test to each individual who has reached the age of mandatory retirement so that the individual may demonstrate his or her fitness to continue performing the duties of the position.

After the passage of HR 4278, LACERA, effective March 31, 1997, began enforcing the mandatory retirement provisions in the County Employees Retirement Law since they were no longer in conflict with the ADEA.

On March 4, 1997, the Board of Supervisors adopted a resolution terminating the application of the mandatory retirement provisions, but limited it to Sheriff's and Fire Department safety members employed after March 31, 1997. This limitation was due to a legal technicality. Under general rules of law, a County's action in adopting an optional code section cannot be rescinded unless there is legislation expressly authorizing such a reversal. Government Code Section 31483 authorizes a board of supervisors to adopt a resolution terminating the applicability of a previously adopted provision, but Section 31483 requires that such action apply to future employees only.

SB 134 authorizes the Board to exempt Sheriff's and Fire Department safety members from mandatory retirement. In addition, SB 134 provides that a Sheriff's Department safety member who was required to retire may be reinstated to active service providing a County employed or County-approved physician certifies that the safety member is capable of performing his or her assigned duties.

County Counsel is of the opinion that Government Code Section 31680.9(a)(2), however, specifically exempts fire suppression safety members from the reinstatement provisions of Section 31680.9. County Counsel further states that if the Legislature were to amend Section 31680.9 (and, if necessary, Section 31680.8) to permit reinstatement of retired fire suppression safety members, that amendment would be self-executing if the Board has previously adopted the implementing resolution for SB 134. It is our intent to sponsor legislation for that purpose and we have requested County Counsel develop the appropriate language.

IMPACT ON CURRENT SERVICES

The recommended action will allow the Sheriff's and Fire Department to retain personnel with specific expertise or experience and therefore maintain the level of services provided to the public.

CONCLUSION

It is, therefore, our recommendation that the Board adopt the attached resolution and create equitable and consistent policies for all safety members of the Los Angeles County Sheriff's and Fire Department.

The Honorable Board of Supervisors
December 18, 2007
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If you have any questions or require additional information, please contact Deputy Chief Executive Officer Doyle Campbell, Public Safety, at (213) 893-2374.

Respectfully,

A handwritten signature in black ink, appearing to read 'W. T. Fujioka', with a stylized flourish at the end.

WILLIAM T FUJIOKA
Chief Executive Officer

WTF:SRH:RDC
JW:SW:yjf

Attachment

c: Sheriff's Department

SB134.bl

**BOARD OF SUPERVISORS
OF THE COUNTY OF LOS ANGELES**

RESOLUTION

WHEREAS, effective January 1, 2008, Section 31663.15 of the Government Code (hereinafter "Section 31663.15") authorizes the Board of Supervisors of the County of Los Angeles upon approval by resolution, to exempt specified safety members from the requirement that such safety members retire at 60 years of age or 70 years of age if a physician employed or approved by the County certifies that the safety member is capable of performing his or her assigned duties; and,

WHEREAS, Section 31663.15 requires that the resolution adopted by the Board also make applicable to the County the provisions of Section 31680.8 of the Government Code (hereinafter "Section 31680.8") which permits a safety member who was required to retire for service because of age to be reemployed by the County in the same position that he or she retired from and be reinstated to active membership under specified conditions including the determination, based on medical advice, that the member is not incapacitated for the duties of the position assigned to him or her;

NOW THEREFORE, BE IT RESOLVED that Section 31663.15 and Section 31680.8 are hereby made applicable to the County of Los Angeles effective January 1, 2008.

WHEREAS, effective June 2, 2008, Section 31663.15 was amended to authorize the Board of Supervisors of the County of Los Angeles to provide by resolution that specified safety members who retired prior to April 1, 2007 are not eligible to reinstate from retirement pursuant to Section 31680.8 of the Government Code;

NOW THEREFORE, BE IT RESOLVED that the amended provision of Section 31663.15, providing that a member, described in Government Code Section 31470.4, who retired pursuant to Government Code Section 31662.4 or Government Code Section 31662.6 prior to April 1, 2007, is not eligible to reinstate from retirement pursuant to Section 31680.8, is hereby made applicable to the County of Los Angeles effective June 2, 2008.

The foregoing resolution was on the 7th day of October, 2008, adopted by the Board of Supervisors of the County of Los Angeles and ex officio the governing body of all other special assessment and taxing districts, agencies and authorities for which said Board so acts.



SACHI A. HAMAI, Executive Officer-
Clerk of the Board of Supervisors
of the County of Los Angeles

By: _____

Deputy

APPROVED AS TO FORM

RAYMOND G. FORTNER, JR.
County Counsel

By: _____

Deputy

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OCT 7 2008